

Supreme Court, U. S.
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-748

P. J. CULLERTON, et al.,

Petitioners,

vs.

FULTON MARKET COLD STORAGE COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Seventh Circuit

REPLY BRIEF FOR PETITIONERS

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This reply brief is necessitated by the respondent's belated factual allegations, made for the first time in the Brief in Opposition, that the taxpayer did resort to certain Illinois statutory and administrative remedies (the specific objection procedure). See Brief for Respondent in Opposition, pp. 9-10*

* The citations contained at footnotes 4 and 5 of Respondent's Brief in Opposition are to specific objections for successive tax years filed by the taxpayer in the Circuit Court of Cook County, Illinois, and which are either presently pending (1975 to 1978) or have recently been adjudicated.

The petitioners note their objection to the foregoing on the basis that, whatever may be the scope of appropriate judicial notice, such matters can only be calculated to obscure and complicate the issues which we attempt to bring before the Court.

This much is clear. The Amended Complaint, which was dismissed by the District Court, made no allegation of resort to Illinois' remedies. Indeed, the District Court, ruling on the motion to dismiss, stated:

"Plaintiff seeks relief in this court without having availed itself of all plain, speedy, and efficient remedies provided by Illinois administrative and judicial procedures."

Pet. App. at 22a.

If the taxpayer's allegations are accepted, then the petitioners suggest that summary reversal of the Court of Appeals for the Seventh Circuit is required on the basis of *Younger v. Harris*, 401 U.S. 37 (1971) as extended and amplified by *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975), *Juidice v. Vail*, 430 U.S. 327 (1977) and *Trainor v. Hernandez*, 97 S. Ct. 1911 (1977). The Illinois real estate tax objection procedure is, of course, a pending state case (for the tax years not yet adjudicated) brought by the County Collector for the purpose of enforcing the collection of local real estate taxes. The Illinois Supreme Court has definitively stated in *LaSalle Nat. Bk. v. County of Cook*, 57 Ill. 2d 318, 312 N.E. 2d 252 (1974) as follows:

The legal remedy by way of payment under protest followed by objections to the application for judgment for delinquent taxes provides an adequate remedy at law wherein the alleged irregularities and violations of plaintiff's constitutional rights may be litigated, and if warranted, relief granted.

This court has held that it is proper to raise constitutional questions arising from alleged improper assessments in this manner. (Citations omitted) (Emphasis supplied).

LaSalle, at 324.

Clearly, since the taxpayer has followed the legal remedy, it could have, or should have raised all of its constitutional questions, including those presented in the Amended Complaint, before the Circuit Court of Cook County. *Younger* abstention would appear to be required on the basis of the new matter appearing in the Respondent's Brief in Opposition. Petitioners thus submit that the opinion of the Seventh Circuit should be summarily reversed.

In any event, the taxpayer's response should not obscure the fact that a 1983 damage action which is premised wholly upon local assessment practices presents the type of intrusion upon state tax collection procedures forbidden by the anti-tax injunction statute. (28 U.S.C. § 1341.) See *Advertiser Co. v. Wallace*, 446 F. Supp. 677, 680 (M.D. Ala. 1978). More particularly, the § 1983 damage action in the case at bar can only deflect and hinder the completion of the specific objection cases now pending before the Circuit Court of Cook County.* Two separate cases upon the same subject matter presently pend, one in the state court, one in the federal court, each premised upon the propriety of the real estate tax assessment of the taxpayer's property. This fact situation presents important, grave problems as to the

* The Fifth Circuit has held that a state court decision upon tax matters governed by 28 U.S.C. § 1341 is *res judicata*, and bars further litigation of the same issues in federal court. See *Mr. Boston Distiller Corp. v. Pallot*, 469 F. 2d 337, 338 (5th Cir. 1972).

correct arrangement of power between the federal court and the state court in an area vital to the fiscal integrity of local government in Illinois.

CONCLUSION

For the foregoing reasons the Petitioners request this Court to summarily reverse the judgment of the Court of Appeals, or, in the alternative, to set the cause for full briefing and argument.

Respectfully submitted,

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